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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,911	03/22/2004	Shun-Xing Xu	14292 B	9682

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NIKOLAI & MERSEREAU, P.A.
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MINNEAPOLIS, MN 55402

EXAMINER

SOOHOO, TONY GLEN

ART UNIT PAPER NUMBER

1723

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/805,911

Applicant(s)

XU ET AL.

Examiner

Tony G. Soohoo

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Henger 671516.

Henger teaches a seat 8, a stirring net including primary and secondary stirring strips 4, 4, 4, made of a wire which is twisted thereby having a spiral groove with a width and depth and overlapping one another when combined with each other in to a rigidly and stable unit. With regards to the issue of the claim 6 and the method of making the device with a soldering step, the manner of making the combined unit fails to patentably distinguish the final structure of the combined unit whereby the final product is a strip which is combined as a rigid and stable unit.

PRODUCT-BY-PROCESS CLAIMS ARE NOT LIMITED TO THE MANIPULATIONS OF THE RECITED STEPS, ONLY THE STRUCTURE IMPLIED BY THE STEPS

“[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.” In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer. The process of making the developer was allowed. The difference between the inventive process and the prior art was the addition of metal oxide and carboxylic acid as separate ingredients instead of adding the more expensive pre-reacted metal carboxylate. The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up

Art Unit: 1723

containing metal carboxylate. The fact that the metal carboxylate is not directly added, but is instead produced in-situ does not change the end product.).

ONCE A PRODUCT APPEARING TO BE SUBSTANTIALLY IDENTICAL IS FOUND AND A 35 U.S.C. 102 /103 REJECTION MADE, THE BURDEN SHIFTS TO THE APPLICANT TO SHOW AN UNOBVIOUS DIFFERENCE

3. Claims 1-2 and 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Witherbee 1250539.

Witherbee teaches seat at the end of shaft 14, a stirring net including primary stirring strips 20, 20, and secondary stirring strips 24, 25, 26, 27, whereby the primary stirring strip 20 made with a twisted thereby having a spiral groove with a width and depth formed between 22 and 20 or upon the other side between the face of 20 and 16, and whereby the primary and secondary strips overlap one another to form the bulb-like stirring new and is connected and combined with each other in to a rigidly and stable unit. With regards to the issue of the claim 6 and the method of making the device with a soldering step, the manner of making the combined unit fails to patentably distinguish the final structure of the combined unit whereby the final product is a strip which is combined as a rigid and stable unit.

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Art Unit: 1723

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Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 –4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Henger.

The Henger reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of having the groove width or depth being substantially equal to 1mm. Absent any unexpected results, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the wires so that it may provide a depth and width equal to 1mm so as to provide a more easily constructed device. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

6. Claims 3 –4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Witherbee 1250539.

The Witherbee 1250539 reference discloses all of the recited subject matter as defined within the scope of the claims with the exception of having the groove width or

depth being substantially equal to 1mm. Absent any unexpected results, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the wires so that it may provide a depth and width equal to 1mm so as to provide a more easily constructed device. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

7. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pusey 372043 in view of Henger 671516.

Pusey teaches seat at the end of shaft B, a stirring net A including primary stirring strips and secondary stirring strips whereby the primary stirring strip made with a wire.

Pusey discloses all of the recited subject matter as defined within the scope of the claims with the exception of the stirring strip wires having a helical groove.

Henger teaches a seat 8, a stirring net including primary and secondary stirring strips 4, 4, 4, made of a wire which is twisted thereby having a spiral groove.

In view of the showing of the Henger reference that one may form a wire stirring net with a twisted wire having a helical groove, it is deemed that it would have been obvious to one of ordinary skill in the art to substitute for the fine wire of Pusey with a twisted wire to form the stirring net A of the Pusey device such that it may provide a more stronger stirring net assembly.

With regards to claims 3-4, whereby the groove width or depth being substantially equal to 1mm. Absent any unexpected results, it is deemed that it would have been obvious to one of ordinary skill in the art to modify the shape of the wires so

Art Unit: 1723

that it may provide a depth and with equal to 1mm so as to provide a more easily constructed device. A change in size is generally recognized as being within the level of ordinary skill in the art. In re Rose, 105 USPQ 237 (CCPA 1955).

With regards to the issue of the claim 6 and the method of making the device with a soldering step, the manner of making the combined unit fails to patentably distinguish the final structure of the combined unit whereby the final product is a strip which is combined as a rigid and stable unit.

**PRODUCT-BY-PROCESS CLAIMS ARE NOT LIMITED TO THE
MANIPULATIONS OF THE RECITED STEPS, ONLY THE STRUCTURE
IMPLIED BY THE STEPS**

"[E]ven though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted) (Claim was directed to a novolac color developer. The process of making the developer was allowed. The difference between the inventive process and the prior art was the addition of metal oxide and carboxylic acid as separate ingredients instead of adding the more expensive pre-reacted metal carboxylate. The product-by-process claim was rejected because the end product, in both the prior art and the allowed process, ends up containing metal carboxylate. The fact that the metal carboxylate is not directly added, but is instead produced in-situ does not change the end product.).

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Conclusion


8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Pusey 372043, Arutyunove et al 5520458, Johnston 1140341, Pribil 2442326, Lum 2652236, Hess 1004786, Wicen 5165881, Goward 653233, Fjellstedt 2798702, Ross 80507.

Art Unit: 1723

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tony G. Soohoo whose telephone number is (571) 272 1147. The examiner can normally be reached on 7-5PM, Tue-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Tony G Soohoo
Primary Examiner
Art Unit 1723
